

OLL 84-1299
9 April 1984

~~CSA/NAAS Access~~
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MEMORANDUM FOR: See Distribution

FROM:

Legislation Division
Office of Legislative Liaison

SUBJECT: Substitute to H.R. 3987, the "National Archives
and Records Administration Act of 1984"

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1. Attached for your information, review, and comment is an amendment in the nature of a substitute to H.R. 3987. My understanding from a conversation with staff on the House Government Operations Committee this morning is that Chairman Brooks will offer the attached substitute at a Committee mark-up tomorrow morning and this will be the version of the bill, with some minor technical changes, which will be reported out of the full Committee.

2. The purpose of this legislation, as explained to me by staff, is to make it clear that the Archivist will have the authority to determine what constitutes an agency record. This is supposedly in response to the litigation which concerned the papers of former Secretary of State Kissinger and the dispute over what constitutes personal papers versus agency records.

3. In reviewing the substitute bill, please note the following three different provisions dealing with access to and inspection of federal agency records by the Archivist--

- (1) proposed subsection 2104(f) on page 4;
- (2) proposed subsection 2906(a)(2) on page 21; and
- (3) proposed subsection 3301(b) on page 32.

Committee staff are aware of the inconsistencies and redundancy of these provisions. I indicated that on initial reading I felt the Agency would certainly want the language in proposed subsection 2906(a)(2) to govern the inspection of records since this would be a continuation of the current statutory language which provides recognition of the special nature of national security information by making the inspections "...subject to the approval of the head of the agency concerned or of the President."

4. Committee staff indicated that there is no intent to disrupt or carve away any of the authority of the Director of Central Intelligence to protect intelligence sources or methods or to change our current relationship with National Records and Archives regarding the disposal of records. The response to my inquiry as to the possibility of inserting a sentence in the substitute regarding the DCI's authority was negative; however, I was assured that this could be made clear in the Committee report to the substitute bill.

5. There is as yet no clear indication as to how long it will take the Committee to complete a report once the Committee has voted on a bill. I indicated to staff this morning that I would be circulating the proposed substitute bill to concerned components within the Agency today and that I would be back in touch as soon as I had received their comments. Therefore, I would appreciate it if you could review the attached as quickly as possible so that we can have timely input into the drafting of the Committee report and decide what our position should be on the legislation as it proceeds to the House floor. Please feel free to relay your comments either in writing or by telephone

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Legislation Division
Office of Legislative Liaison

Attachment
As stated

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LEG/OLL [redacted] grf (9 April 1984)

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AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3987 OFFERED BY MR. BROOKS

Strike out all after the enacting clause and insert in lieu thereof the following:

1 That this Act may be cited as the ''National Archives and
2 Records Administration Act of 1984''.

3 TITLE I--ESTABLISHMENT OF AN INDEPENDENT NATIONAL ARCHIVES
4 AND RECORDS ADMINISTRATION

5 ESTABLISHMENT

6 SEC. 101. Section 2102 of title 44, United States Code,
7 is amended to read as follows:

8 ''§2102. Establishment

9 ''There shall be an independent establishment in the
10 executive branch of the Government to be known as the
11 National Archives and Records Administration. The
12 Administration shall be administered under the supervision
13 and direction of the Archivist.''.
14

ORGANIZATION AND GENERAL AUTHORITY

15 SEC. 102. (a) Chapter 21 of title 44, United States
16 Code, is amended--

17 (1) by redesignating sections 2103 through 2114 as
18 sections 2107 through 2118, respectively; and

19 (2) by inserting after section 2102 the following
20 new sections:

1 ''§2103. Officers

2 ''(a) The Archivist of the United States shall be
3 appointed by the President by and with the advice and
4 consent of the Senate. The Archivist shall be appointed
5 without regard to political affiliations and solely on the
6 basis of the professional qualifications required to perform
7 the duties and responsibilities of the office of Archivist.
8 The Archivist may be removed from office by the President.
9 The President shall communicate the reasons for any such
10 removal to each House of the Congress.

11 ''(b) The Archivist shall be compensated at the rate
12 provided for level III of the Executive Schedule under
13 section 5314 of title 5.

14 ''(c) There shall be in the Administration a Deputy
15 Archivist of the United States, who shall be appointed by
16 and who shall serve at the pleasure of the Archivist. The
17 Deputy Archivist shall be established as a career reserved
18 position in the Senior Executive Service within the meaning
19 of section 3132(a)(8) of title 5. The Deputy Archivist shall
20 perform such functions as the Archivist shall designate.
21 During any absence or disability of the Archivist, the
22 Deputy Archivist shall act as Archivist. In the event of a
23 vacancy in the office of the Archivist, the Deputy Archivist
24 shall act as Archivist until an Archivist is appointed under
25 subsection (a).

1 ''§2104. Administrative provisions

2 ''(a) The Archivist shall prescribe such policies,
3 standards, criteria, procedures, rules, and regulations as
4 the Archivist finds necessary or appropriate to carry out
5 the functions of the Administration. The head of each
6 Federal agency shall issue such orders and directives as may
7 be necessary to conform the activities of the agency with
8 the policies, standards, criteria, procedures, rules, and
9 regulations prescribed by the Archivist.

10 ''(b) Except as otherwise expressly provided by law, the
11 Archivist may delegate functions to designated officers and
12 employees of the Administration, and may authorize such
13 successive redelegations of such functions as the Archivist
14 may deem to be necessary or appropriate. A delegation of
15 functions by the Archivist shall not relieve the Archivist
16 of responsibility for the administration of such functions.

17 ''(c) The Archivist is authorized to establish,
18 maintain, alter, or discontinue such regional, local, or
19 other field offices as the Archivist finds necessary or
20 appropriate to perform the functions of the Archivist or the
21 Administration.

22 ''(d) The Archivist may establish advisory committees to
23 advise him with respect to any function of the Archivist or
24 the Administration. Members of any such committee shall
25 serve without compensation but shall be entitled to

1 transportation expenses and per diem in lieu of subsistence
 2 in accordance with section 5703 of title 5.

3 ''(e) The Archivist shall advise and consult with
 4 interested Federal agencies with a view to obtaining their
 5 advice and assistance in carrying out the purposes of this
 6 chapter.

7 ''(f) Each Federal agency is required to furnish to the
 8 Archivist, upon request, any information or other data which
 9 the Archivist finds necessary to carry out the duties of the
 10 Archivist.

11 ''(h) If authorized by the Archivist, officers and
 12 employees of the Administration having investigatory
 13 functions are empowered, while engaged in the performance of
 14 their duties in conducting investigations, to administer
 15 oaths.

16 ''§2105. Personnel and services

17 ''(a) The Archivist is authorized to select, appoint,
 18 employ, and fix the compensation of such officers and
 19 employees, pursuant to part III of title 5, as are necessary
 20 to perform the functions of the Archivist and the
 21 Administration.

22 ''(b) The Archivist is authorized to obtain the services
 23 of experts and consultants under section 3109 of title 5.

24 ''(c) Notwithstanding the provisions of section 973 of
 25 title 10 or any other provision of law, the Archivist, in

1 carrying out the functions of the Archivist or the
2 Administration, is authorized to utilize in the
3 Administration the services of officials, officers, and
4 other personnel in other Federal agencies, including
5 personnel of the armed services, with the consent of the
6 head of the agency concerned.

7 '(d) The Archivist is authorized to accept and utilize
8 voluntary and uncompensated services.

9 '\$2106. Reports to Congress

10 'The Archivist shall submit to the Congress, in January
11 of each year and at such other times as the Archivist finds
12 appropriate, a report concerning the administration of
13 functions of the Archivist and the Administration.'.

14 (b) Section 2101 of title 44, United States Code, is
15 amended--

16 (1) by designating the two indented paragraphs as
17 paragraphs (1) and (2), respectively;

18 (2) by striking out 'sections 2103-2113 of this
19 title' in the matter preceding the first such paragraph
20 and inserting in lieu thereof 'this chapter';

21 (3) by striking out the period at the end and
22 inserting in lieu thereof a semicolon; and

23 (4) by adding at the end thereof the following new
24 paragraphs:

25 '(3) 'Archivist' means the Archivist of the United

1 States appointed under section 2103;

2 '(4) 'Administration' means the National Archives
3 and Records Administration established under section
4 2102; and

5 '(5) 'Federal agency' means any executive
6 department, military department, Government corporation,
7 Government-controlled corporation, or other
8 establishment in the executive branch of the Government
9 (including the Executive Office of the President), any
10 independent regulatory agency, or any establishment in
11 the legislative or judicial branch of the Government
12 (except the Senate and the House of Representatives).'

13 (c)(1) The table of sections for chapter 21 of title 44,
14 United States Code, is amended to read as follows:

15 'CHAPTER 21--NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

'Sec.

'2101. Definitions.

'2102. Establishment.

'2103. Officers.

'2104. Administrative provisions.

'2105. Personnel and services.

'2106. Reports to Congress.

'2107. Acceptance of records for historical preservation.

'2108. Responsibility for custody, use, and withdrawal of
records.

'2109. Preservation, arrangement, duplication, exhibition
of records.

'2110. Servicing records.

'2111. Material accepted for deposit.

'2112. Presidential archival depository.

'2113. Depository for agreements between States.

'2114. Preservation of motion-picture films, still
pictures, and sound recordings.

'2115. Reports; correction of violations.

'2116. Legal status of reproductions; official seal, fees

for copies and reproductions.
''2117. Limitation on liability.
''2118. Records of Congress.''.
1

(2) The item relating to chapter 21 in the table of
2 chapters for title 44, United States Code, is amended to
3 read as follows:

''21. National Archives and Records
Administration-----2101''.

4 TRANSFERS

5 SEC. 103. (a) The National Archives and Records Service
6 of the General Services Administration is transferred to the
7 National Archives and Records Administration.

8 (b)(1) All functions which were assigned to the
9 Administrator of General Services by section 6 of Executive
10 Order No. 10530 of May 11, 1954 (19 Fed. Reg. 2709; relating
11 to documents and the Administrative Conference of the
12 Federal Register), and by Executive Order No. 11440 of
13 December 11, 1968 (33 Fed. Reg. 18475; relating to
14 supplemental use of Federal exhibits and displays), shall be
15 exercised by the Archivist of the United States.

16 (2) All functions pertaining to the maintenance,
17 operation, and protection of a Presidential archival
18 depository which were assigned to the Administrator of
19 General Services by the Act of September 6, 1965 (Public Law
20 89-169, 79 Stat. 648), relating to the Lyndon Baines Johnson
21 Presidential Archival Depository, and by the Act of August
22 27, 1966 (Public Law 89-547, 80 Stat. 370) and the Act of

1 May 26, 1977. (Public Law 95-34, 91 Stat. 174), relating to
2 the John Fitzgerald Kennedy Library, shall be exercised by
3 the Archivist of the United States.

4 (3) All functions which were assigned to the
5 Administrator of General Services by the sections 5.1(b) and
6 5.2(a) of Executive Order No. 12356 of April 2, 1982
7 (relating to national security information and the

8 Information Security Oversight Office), shall be exercised
9 by the Archivist of the United States.

10 (c) Prior to the appointment and confirmation of an
11 individual to serve as Archivist of the United States under
12 section 2103 of title 44, United States Code, the individual
13 holding the office of Archivist of the United States on the
14 day before the effective date of this Act may serve as
15 Archivist under such section, and while so serving shall be
16 compensated at the rate provided under subsection (b) of
17 such section.

18 TRANSFER OF PERSONNEL

19 SEC. 104. (a) Except as otherwise provided in this Act,
20 the personnel employed in connection with, and the assets,
21 liabilities, contracts, property, records, and unexpended
22 balances of appropriations, authorizations, allocations, and
23 other funds employed, held, used, arising from, available to
24 or to be made available in connection with the functions and
25 agencies transferred by this Act or the amendments made by

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1 this Act, subject to section 1531 of title 31, United States
2 Code, are transferred to the Archivist for appropriate
3 allocation. A percentage of the funds and associated
4 positions in the General Management and Administration
5 appropriation for the General Services Administration,
6 proportionate to the percentage of National Archives and
7 Records Service employees in the General Services
8 Administration, is transferred to the Archivist for
9 appropriate allocation. Unexpended funds transferred
10 pursuant to this subsection shall be used only for the
11 purposes for which the funds were originally authorized and
12 appropriated.

13 (b) The transfer pursuant to this title of full-time
14 personnel (except special Government employees) and
15 part-time personnel holding permanent positions shall not
16 cause any such employees to be separated or reduced in grade
17 or compensation for one year after such transfer or after
18 the effective date of this Act, whichever is later.

19 SAVINGS PROVISIONS

20 SEC. 105. (a) All orders, determinations, rules,
21 regulations, grants, contracts, agreements, permits,
22 licenses, privileges, and other actions which have been
23 issued, granted, made, undertaken, or entered into in the
24 performance of any function transferred by this Act or the
25 amendments made by this Act shall continue in effect

1 according to their terms until modified, terminated,
2 superseded, set aside, or revoked in accordance with law by
3 any authorized official, a court of competent jurisdiction,
4 or by operation of law.

5 (b)(1) The transfer of functions by this Act and by the
6 amendments made the amendments made by this Act shall not
7 affect any proceedings, including notices of proposed
8 rulemaking, or any application for any license, permit,
9 certificate, or financial assistance pending on the
10 effective date of this Act before the General Services
11 Administration; but such proceedings and applications, to
12 the extent that they relate to the functions so transferred,
13 shall be continued. Orders shall be issued in such
14 proceedings, appeals shall be taken therefrom, and payments
15 shall be made pursuant to such orders, as if this Act had
16 not been enacted; and orders issued in any such proceedings
17 shall continue in effect until modified, terminated,
18 superseded, or revoked by the Archivist, by a court of
19 competent jurisdiction, or by operation of law. Nothing in
20 this subsection shall be deemed to prohibit the
21 discontinuance or modification of any such proceeding under
22 the same terms and conditions and to the same extent that
23 such proceeding could have been discontinued or modified if
24 this Act had not been enacted.

25 (2) The Archivist is authorized to promulgate

1 regulations providing for the orderly transfer of
2 proceedings continued under paragraph (1) from the General
3 Services Administration to the Administration.

4 (c) Except as provided in subsection (e)--

5 (1) the provisions of this Act and of the amendments
6 made by this Act shall not affect actions commenced
7 prior to the effective date of this Act, and

8 (2) in all such actions, proceedings shall be had,
9 appeals taken, and judgments rendered in the same manner
10 and effect as if this Act had not been enacted.

11 (d) No action or other proceeding lawfully commenced by
12 or against any officer of the United States acting in his or
13 her official capacity shall abate by reason of any transfer
14 of functions by this Act or by an amendment made by this
15 Act. No cause of action by or against the General Services
16 Administration or by or against any officer thereof in the
17 official capacity of such officer shall abate by reason of
18 any such transfer of functions.

19 (e) If, before the date on which this Act takes effect,
20 the General Services Administration or any officer thereof
21 in the official capacity of such officer, is a party to an
22 action, and under this Act any function in connection with
23 such action is transferred to the Archivist or any other
24 official of the Administration, then such action shall be
25 continued with the Archivist or other appropriate official

1 of the Administration substituted or added as a party.

2 (f) Orders and actions of the Archivist in the exercise
3 of functions transferred by this Act or by amendments made
4 by this Act shall be subject to judicial review to the same
5 extent and in the same manner as if such orders and actions
6 had been by the individual holding the office of Archivist
7 of the United States on the day before the effective date of
8 this Act or the Administrator of General Services in the
9 exercise of such functions immediately preceding their
10 transfer. Any statutory requirements relating to notice,
11 hearings, action upon the record, or administrative review
12 that apply to any function transferred by this Act or by any
13 amendment made by this Act shall apply to the exercise of
14 such function by the Archivist.

15 REFERENCE

16 SEC. 106. With respect to any functions transferred by
17 this Act or by an amendment made by this Act and exercised
18 after the effective date of this Act, reference in any other
19 Federal law to the office of the Archivist of the United
20 States as in existence on the date before the effective date
21 of this Act, or the National Archives and Records Service of
22 the General Services Administration, or any office or
23 officer thereof, shall be deemed to refer to the Archivist
24 or the Administration.

25 CONFORMING AMENDMENTS

1 SEC. 107. (a)(1) Section 2107 of title 44, United States
2 Code, as redesignated by section 102(a)(1), is amended--

3 (A) by striking out 'Administrator of General
4 Services' and inserting in lieu thereof 'Archivist';

5 (B) by striking out 'section 2107' in paragraph
6 (4) and inserting in lieu thereof 'section 2111'; and

7 (C) by striking out 'Administrator' in such
8 paragraph and inserting in lieu thereof 'Archivist'.

9 (2) Section 2108 of such title, as redesignated by
10 section 102(a)(1), is amended--

11 (A) by striking out 'the Administrator, the
12 Archivist of the United States, and to the employees of
13 the General Services Administration' in subsection (a)
14 and inserting in lieu thereof 'the Archivist and to the
15 employees of the National Archives and Records
16 Administration';

17 (B) by striking out 'and in consultation with the
18 Archivist of the United States' in such subsection;

19 (C) by striking out 'the Archivist and' in the
20 fifth sentence of such subsection;

21 (D) by striking out 'Administrator of General
22 Services' each place it appears and inserting in lieu
23 thereof 'Archivist'; and

24 (E) by striking out 'Administrator' each place it
25 appears and inserting in lieu 'Archivist'.

1 (3) Section 2109 of such title, as redesignated by
2 section 102(a)(1), is amended by striking out
3 ''Administrator of General Services'' and inserting in
4 lieu thereof ''Archivist''.

5 (4) Section 2110 of such title, as redesignated by
6 section 102(a)(1), is amended by striking out
7 ''Administrator of General Services'' and inserting in
8 lieu thereof ''Archivist''.

9 (5) Section 2111 of such title, as redesignated by
10 section 102(a)(1), is amended--

11 (A) by striking out ''Administrator of General
12 Services'' and inserting in lieu thereof ''Archivist'';
13 and

14 (B) by striking out ''Administrator'' and inserting
15 in lieu thereof ''Archivist''.

16 (6) Section 2112 of such title, as redesignated by
17 section 102(a)(1), is amended--

18 (A) by striking out ''Administrator of General
19 Services'' and inserting in lieu thereof ''Archivist'';

20 (B) by striking out ''Administrator'' each place it
21 appears and inserting in lieu thereof ''Archivist''; and

22 (C) by striking out ''section 2107'' each place it
23 appears and inserting in lieu thereof ''section 2111''.

24 (7) Sections 2113, 2114, and 2117 of such title, as
25 redesignated by section 102(a)(1), are amended by striking

1 out 'Administrator of General Services' and inserting in
2 lieu thereof 'Archivist'.

3 (8) Sections 2115 and 2116 of such title, as
4 redesignated by section 102(a)(1), are amended--

5 (A) by striking out 'Administrator of General
6 Services' and inserting in lieu thereof 'Archivist';
7 and

8 (B) by striking out 'Administrator' each place it
9 appears and inserting in lieu thereof 'Archivist'.

10 (9) Section 2118 of such title, as redesignated by
11 section 102(a)(1), is amended by striking out 'General
12 Services Administration' and inserting in lieu thereof
13 'National Archives and Records Administration'.

14 (b)(1) Sections 710, 711, and 729 of title 44, United
15 States Code, are amended by striking out 'Administrator of
16 General Services' each place it appears and inserting in
17 lieu thereof 'Archivist of the United States'.

18 (2) Section 1502 of such title is amended by striking
19 out 'Administrator of General Services' each place it
20 appears and inserting in lieu thereof 'Archivist of the
21 United States'.

22 (3) Section 1503 of such title is amended--

23 (A) by striking out 'Administrator of General
24 Services' and inserting in lieu thereof 'Archivist of
25 the United States'; and

1 (B) by striking out 'Administrator' and inserting
2 in lieu thereof 'Archivist'.

3 (4) Section 1506 of such title is amended is amended by
4 striking out the third sentence.

5 (5) Section 1714 of such title is amended by striking
6 out 'to the General Services Administration'.

7 (6) Sections 2204(c)(1) and 2205 of such title are
8 amended by striking out 'National Archives and Records
9 Service of the General Services Administration' and
10 inserting in lieu thereof 'National Archives and Records
11 Administration'.

12 (7) Section 2301 of such title is amended by striking
13 out the second sentence thereof.

14 (8) Section 2501 of such title is amended by striking
15 out the last sentence thereof.

16 (9) Section 2504 is amended--

17 (A) by striking out 'Administrator of General
18 Services' in the third sentence of subsection (a) and
19 inserting in lieu thereof 'Archivist of the United
20 States';

21 (B) by striking out 'Administrator' in the fourth
22 sentence of such subsection and inserting in lieu
23 thereof 'Archivist';

24 (C) by striking out 'transmit to the
25 Administrator' in the last sentence of such subsection

1 and inserting in lieu thereof ''make available to the
2 public''; and

3 (D) by striking out ''General Services
4 Administrator'' in subsection (b) and inserting in lieu
5 thereof ''National Archives and Records
6 Administration''.

7 (10) Section 2506 of such title is amended--

8 (A) by striking out ''Administrator of General
9 Services'' in subsection (a) and inserting in lieu
10 thereof ''Archivist of the United States''; and

11 (B) by striking out ''Administrator'' in subsection
12 (b) and inserting in lieu thereof ''Archivist''.

13 (11) Section 2507 of such title is amended by striking
14 out ''Administrator of General Services'' and inserting in
15 lieu thereof ''Archivist of the United States''.

16 (12) Section 2901 of such title is amended--

17 (A) by inserting before the semicolon at the end of
18 paragraph (2) the following: ''to achieve adequate and
19 proper documentation of the policies and transactions
20 of the Federal Government and effective and economical
21 management of agency operations'';

22 (B) by striking out ''Administrator'' each place it
23 appears in paragraphs (6), (9), and (11) and inserting
24 in lieu thereof ''Archivist''; and

25 (C) by redesignating paragraphs (12) and (13) as

1 paragraphs (13) and (14), respectively, and by inserting
2 after paragraph (11) the following new paragraph:

3 '(12) the term 'Archivist' means the Archivist of
4 the United States;''.

5 (13) Section 2902(7) is amended by inserting 'or
6 the Archivist'' after 'Administrator''.

7 (14) Sections 2903, 2905(b), 2907, 2908, and 2909 of
8 such title are amended by striking out 'Administrator' and
9 'Administrator of General Services' each place they appear
10 and inserting in lieu thereof 'Archivist''.

11 (15) Section 2904 is amended to read as follows:

12 *File 44* '\$2904. General responsibilities for records management

13 '(a) The Archivist shall provide guidance and
14 assistance to Federal agencies with respect to ensuring
15 adequate and proper documentation of the policies and
16 transactions of the Federal Government and ensuring proper
17 records disposition.

18 '(b) The Administrator shall provide guidance and
19 assistance to Federal agencies to ensure economical and
20 effective records management by such agencies.

21 '(c) In carrying out their responsibilities under
22 subsection (a) or (b), respectively, the Archivist and the
23 Administrator shall each have the responsibility--

24 '(1) to promulgate standards, procedures, and
25 guidelines with respect to records management and the

1 conduct of records management studies;

2 ''(2) to conduct research with respect to the
3 improvement of records management practices and
4 programs;

5 ''(3) to collect and disseminate information on
6 training programs, technological developments, and other
7 activities relating to records management;

8 ''(4) to establish such interagency committees and
9 boards as may be necessary to provide an exchange of
10 information among Federal agencies with respect to
11 records management;

12 ''(5) to direct the continuing attention of Federal
13 agencies and the Congress on the need for adequate
14 policies governing records management;

15 ''(6) to conduct records management studies and, in
16 his discretion, designate the heads of executive
17 agencies to conduct records management studies with
18 respect to establishing systems and techniques designed
19 to save time and effort in records management;

20 ''(7) to conduct inspections or surveys of the
21 records and the records management programs and
22 practices within and between Federal agencies;

23 ''(8) to report to the appropriate oversight and
24 appropriations committees of the Congress and to the
25 Director of the Office of Management and Budget annually

1 and at such other times as the Archivist or the
2 Administrator (as the case may be) deems desirable--

3 "(A) on the results of activities conducted
4 pursuant to paragraphs (1) through (7) of this
5 section,

6 "(B) on evaluations of responses by Federal
7 agencies to any recommendations resulting from
8 inspections or studies conducted under paragraphs
9 (6) and (7) of this section, and

10 "(C) to the extent practicable, estimates of
11 costs to the Federal Government resulting from the
12 failure of agencies to implement such
13 recommendations.

14 "(d) In addition, the Administrator, in carrying out
15 the responsibilities under subsection (b) shall have the
16 responsibility to promote economy and efficiency in the
17 selection and utilization of space, staff, equipment, and
18 supplies for records management.

19 (16) Section 2906 of such title is amended to read as
20 follows:

21 "\$2906. Inspection of agency records

22 "(a)(1) In carrying out their respective duties and
23 responsibilities under this chapter, the Administrator of
24 General Services and the Archivist (or the designee of
25 either) may inspect the records or the records management

1 practices and programs of any Federal agency solely for the
2 purpose of rendering recommendations for the improvement of
3 records management practices and programs. Officers and
4 employees of such agencies shall cooperate fully in such
5 inspections, subject to the provisions of paragraphs (2) and
6 (3) of this subsection.

7 "(2) Records, the use of which is restricted by law or
8 for reasons of national security or the public interest,
9 shall be inspected, in accordance with regulations
10 promulgated by the Administrator and the Archivist, subject
11 to the approval of the head of the agency concerned or of
12 the President. The regulations promulgated by the
13 Administrator and the Archivist under this paragraph shall,
14 to the extent practicable, be identical.

15 "(3) If the Administrator or the Archivist (or the
16 designee of either) inspects a record, as provided in this
17 subsection, which is contained in a system of records which
18 is subject to section 552a of title 5, such record shall
19 be--

20 "(A) maintained by the Administrator, the
21 Archivist, or such designee as a record contained in a
22 system of records; or

23 "(B) deemed to be a record contained in a system of
24 records for purposes of subsections (b), (c), and (i) of
25 section 552a of title 5.

1 ''(b) In conducting the inspection of agency records
2 provided for in subsection (a) of this section, the
3 Administrator and the Archivist (or the designee of either)
4 shall, in addition to complying with the provisions of law
5 cited in subsection (a)(3), comply with all other Federal
6 laws and be subject to the sanctions provided therein.''.
7

7 (17)(A) The heading of chapter 29 of title 44, United
8 States Code, is amended by inserting "'BY THE ARCHIVIST OF
9 THE UNITED STATES AND'" after "'RECORDS MANAGEMENT'".

10 (B) The item relating to chapter 29 in the table of
11 chapters for title 44, United States Code, is amended to
12 read as follows:

'29. Records Management by the Archivist of the United States and by the Administrator of General Service 2901''

13 (18) Section 3102(2) of such title is amended by
14 inserting "'and the Archivist of the United States'" after
15 "'Administrator of General Services'".

16 (19) Section 3103 of such title is amended by striking
17 out "'Administrator'" and inserting in lieu thereof
18 "'Archivist of the United States'".

19 (20) Sections 3104 and 3106 of such title are amended--

20 (A) by striking out "Administrator of General
21 Services" and inserting in lieu thereof "Archivist of
22 the United States"; and

23 (B) by striking out "'Administrator'" and inserting

1 in lieu thereof 'Archivist'.

2 (21) Section 3105 of such title is amended by striking
3 out 'Administrator of General Services' and inserting in
4 lieu thereof 'Archivist of the United States'.

5 (22) Sections 3302, 3303, 3308, and 3311 of such title
6 are amended by striking out 'Administrator of General
7 Services' and inserting in lieu thereof 'Archivist of the
8 United States'.

9 (23) Sections 3303a and 3310 of such title are amended--

10 (A) by striking out 'Administrator of General
11 Services' and inserting in lieu thereof 'Archivist of
12 the United States'; and

13 (B) by striking out 'Administrator' each place it
14 appears and inserting in lieu thereof 'Archivist'.

15 (24)(A) The headings of sections 3303, 3303a, and 3311
16 of such title are amended by striking out 'Administrator
17 of General Services' and inserting in lieu thereof
18 'Archivist of the United States'.

19 (B) The table of sections for chapter 33 of such title
20 is amended by striking out 'Administrator of General
21 Services' in the items pertaining to sections 3303, 3303a,
22 and 3311 and inserting in lieu thereof 'Archivist of the
23 United States'.

24 (25) Section 3504(e) of such title is amended by
25 inserting 'the Archivist of the United States and' before

1 'the Administrator of General Services' each place it
2 appears in paragraphs (1) and (2).

3 (26) Section 3513 of such title is amended by inserting
4 'and the Archivist of the United States' after
5 'Administrator of General Services'.

6 (c)(1) Section 101 of the Presidential Recordings and
7 Materials Preservation Act is amended--

8 (A) by striking out 'section 2107' each place it
9 appears and inserting in lieu thereof 'section 2111';

10 (B) by striking out 'Administrator of General
11 Services (hereinafter referred to as the
12 'Administrator'))' and inserting in lieu thereof
13 'Archivist of the United States (hereinafter referred
14 to as the 'Archivist'))'; and

15 (C) by striking out 'Administrator' each place it
16 appears and inserting in lieu thereof 'Archivist'.

17 (2) Section 102 of such Act is amended--

18 (A) by striking out 'section 2107' and inserting
19 in lieu thereof 'section 2111', and

20 (B) by striking out 'Administrator' each place it
21 appears and inserting in lieu thereof 'Archivist'.

22 (3) Section 103 of such Act is amended by striking out
23 'Administrator' and inserting in lieu thereof
24 'Archivist'.

25 (d) Sections 106a, 106b, and 112 of title 1, United

1 States Code, are amended by striking out 'Administrator of
2 General Services' and 'General Services Administration'
3 each place they appears and inserting in lieu thereof
4 'Archivist of the United States' and 'National Archives
5 and Records Administration', respectively.

6 (e)(1) Sections 6 and 11 through 13 of title 3, United
7 States Code, are amended by striking out 'Administrator of
8 General Services' and 'General Services Administration'
9 each place they appear and inserting in lieu thereof
10 'Archivist of the United States,' and 'National Archives
11 and Records Administration', respectively.

12 (2) The headings of sections 6 and 12 of such title are
13 amended by striking out 'Administrator of General
14 Services' and inserting in lieu thereof 'Archivist of the
15 United States'.

16 (3) The table of sections for chapter 1 of such title is
17 amended by striking out 'Administrator of General
18 Services' in the items pertaining to sections 6 and 12 and
19 inserting in lieu thereof 'Archivist of the United
20 States'.

21 (f) Sections 141 through 145 of title 4, United States
22 Code, are amended by striking out 'Administrator of General
23 Services', 'Administrator', and 'General Services
24 Administration' each place they appear and inserting in
25 lieu thereof 'Archivist of the United States',

1 ''Archivist'', and ''National Archives and Records
2 Administration'', respectively.

3 (g) Subsections (b)(6) and (1)(1) of section 552a of
4 title 5, United States Code, are amended by striking out
5 ''Administrator of General Services'' each place it appears
6 and inserting in lieu thereof ''Archivist of the United
7 States.''

8 (h) Section 5314 of title 5, United States Code, is
9 amended by adding at the end thereof the following:

10 ''Archivist of the United States.''

11 (i) Section 4(5) of the Act of October 25, 1951 (25
12 U.S.C. 199a) is amended by striking out ''Administrator of
13 General Services'' each place it appears and inserting in
14 lieu thereof ''Archivist of the United States''.

15 DEFINITIONS

16 SEC. 108. For purposes of sections 103 through 106--

17 (1) the term ''Archivist'' means the Archivist of
18 the United States appointed under section 2104 of title
19 44, United States Code, as added by section 2 of this
20 Act;

21 (2) the term ''Administration'' means the National
22 Archives and Records Administration established under
23 section 2103 of such title (as amended by section 2 of
24 this Act); and

25 (3) the term ''function'' includes any duty,

1 obligation, power, authority, responsibility, right,
2 privilege, activity, or program.

3 EFFECTIVE DATE

4 SEC. 109. The provisions of this title shall be
5 effective 120 days after the date of enactment of this Act.

6 TITLE II--ADMINISTRATIVE PROVISIONS

7 COPYING AND AUTHENTICATING CHARGES

8 SEC. 201. Section 2116(c) of title 44, United States
9 Code (as redesignated by section 102(a)), is amended to read
10 as follows:

11 '(c) The Archivist may charge a fee set to recover the
12 costs for making or authenticating copies or reproductions
13 of materials transferred to his custody. Such fee shall be
14 fixed by the Archivist at a level which will recover, so far
15 as practicable, all elements of such costs, and may, in the
16 Archivist's discretion, include increments for the estimated
17 replacement cost of equipment. The Archivist may not charge
18 for making or authenticating copies or reproductions of
19 materials for official use by the United States Government
20 unless appropriations available to the Archivist for this
21 purpose are insufficient to cover the cost of performing the
22 work. Fees shall be deposited to the credit of the
23 appropriation against which charges have been made.''.
24

24 NATIONAL ARCHIVES TRUST FUND BOARD

25 SEC. 202. (a) Chapter 23 of title 44, United States

1 Code, is amended by striking out sections 2302 through 2305
2 and inserting in lieu thereof the following:

3 ''§2302. Authority of the Board; seal; services; annual
4 report; bylaws; rules; regulations

5 ''In carrying out the purposes of this chapter, the
6 Board shall--

7 ''(1) adopt an official seal, which shall be
8 judicially noticed;

9 ''(2) utilize on a reimbursable basis the services
10 and personnel of the National Archives and Records
11 Administration necessary (as determined by the
12 Archivist) to assist the Board in the administration of
13 the trust fund, and in the preparation and publication
14 of special works and collections of sources and
15 preparation, duplication, editing, and release of
16 historical photographic materials and sound recordings;

17 ''(3) submit to the Congress an annual report of the
18 moneys, securities, and other personal property received
19 and held by it, and of its operations, which shall
20 include a listing of the purposes for which funds are
21 transferred to the National Archives and Records
22 Administration for expenditure;

23 ''(4) adopt bylaws, rules, and regulations necessary
24 for the administration of its functions under this
25 chapter.

1 ''§2303. Powers and obligations of the Board; liability of
2 members

3 ''Except as otherwise provided by this chapter, the
4 Board shall have all the usual powers and obligations of a
5 trustee with respect to property and funds administered by
6 it, but the members of the Board are not personally liable,
7 except for malfeasance.

8 ''§2304. Compensation of members; availability of trust
9 funds for expenses of the Board

10 ''Compensation may not be paid to the members of the
11 Board for their services as members. Costs incurred by the
12 Board in carrying out its duties under this chapter,
13 including the obligations necessarily incurred by the
14 members of the Board in the performance of their duties,
15 shall be paid by the Archivist of the United States from
16 trust funds available to the Board for this purpose. The
17 Board, by resolution may authorize the transfer of funds
18 (including the principal or interest of a gift or request)
19 to the National Archives and Records Administration to be
20 expended on an archival or records activity approved by the
21 Board or to accomplish the purpose of a gift or bequest.
22 Unless otherwise required by the instrument of gift or
23 bequest, no expenditure shall be approved or made toward an
24 object or purposes for which appropriated funds could not be
25 expended.

1 ''§2305. Acceptance of gifts

2 ''The Board may solicit and accept gifts or bequests of
3 money, securities, or other personal property, for the
4 benefit of or in connection with the national archival and
5 records activities administered by the National Archives and
6 Records Administration. Moneys that are for deposit into the
7 trust fund shall be deposited within 5 working days of the
8 receipt thereof.''.
9

10 (b) Section 2307 of title 44, United States Code, is
11 amended to read as follows:

12 ''§2307. Trust fund account; disbursements; sales of
13 publications and releases

14 ''The income from trust funds held by the Board and the
15 proceeds from the sale of securities and other personal
16 property, as and when collected, shall be covered into the
17 Treasury of the United States in a trust fund account to be
18 known as the National Archives Trust Fund, subject to
19 disbursement on the basis of certified vouchers of the
20 Archivist of the United States (or his designee) for
21 activities approved by the Board and in the interest of the
22 national archival and records activities administered by the
23 National Archives and Records Administration, including but
24 not restricted to the preparation and publication of special
25 works, and collections of sources and the preparation,
duplication, editing, and release of historical photographic

1 materials and sound recordings. The Archivist may sell
2 publications and releases authorized by this section and
3 paid for out of the income derived from trust funds at a
4 price which will cover their cost, and moneys received from
5 these sales shall be paid into, administered, and expended
6 as part of the National Archives Trust Fund.''.
7

8 (c) The table of sections for chapter 23 of title 44,
9 United States Code, is amended by striking out
10 ''employees;'' in the item pertaining to section 2302 and
11 inserting in lieu thereof ''services; annual report;''.

12 AUTHORITY TO LITIGATE

13 SEC. 203. (a) Section 2905(a) of title 44, United
14 States Code, is amended by adding at the end thereof the
15 following new sentence: ''In any case in which the head of
16 the agency fails to initiate an action for such recovery or
17 other redress within a reasonable period of time after being
18 notified of any such unlawful action, the Archivist of the
19 United States may, through the Attorney General, initiate
20 such an action; and the Archivist shall report the
21 circumstances of any such failure by the head of the agency
22 to the appropriate committees of the Congress.''.
23

24 (b) Section 3106 of title 44, United States Code, is
25 amended by adding at the end thereof the following new
sentence: ''In any case in which the head of the agency
fails to initiate an action for such recovery or other

1 redress within a reasonable period of time after being
2 notified of any such unlawful action, the Archivist of the
3 United States may, through the Attorney General, initiate
4 such an action; and the Archivist shall report the
5 circumstances of any such failure by the head of the agency
6 to the appropriate committees of the Congress.''.
7

INSPECTION OF RECORDS

8 SEC. 204. Section 3301 of title 44, United States Code,
9 is amended--

10 (1) by inserting ''(a)'' before ''As used in this
11 chapter,'';

12 (2) by inserting '', as determined by the Archivist
13 of the United States,' after ''public business and
14 preserved or''; and

15 (3) by adding at the end thereof the following new
16 subsection:

17 ''(b) The Archivist of the United States shall, by
18 regulation, establish detailed criteria under which material
19 shall be examined to determine if it is a record as defined
20 under subsection (a) and such regulation. The Archivist may
21 have access, to determine compliance with such subsection
22 and such regulations, to any material made or received by an
23 agency of the United States Government.''.
24

PUBLIC NOTICE

25 SEC. 205. Section 3303a(a) of title 44, United States

1 Code, is amended by inserting '', after publication of
2 notice in the Federal Register and an opportunity for
3 interested persons to submit comment thereon'' immediately
4 after ''may'' in the second sentence thereof.